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IN THE

Supreme Court of the United States

October Term, 1962

No. [redacted] 191

INTERNATIONAL SHOE MACHINE CORPORATION,
Petitioner,

against

UNITED SHOE MACHINERY CORPORATION,
Respondent.

REPLY TO RESPONDENT'S BRIEF OPPOSING CERTIORARI

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IN THE

Supreme Court of the United States

October Term, 1962

No. 1163

INTERNATIONAL SHOE MACHINE CORPORATION,

Petitioner,

against

UNITED SHOE MACHINERY CORPORATION,

Respondent.

REPLY TO RESPONDENT'S BRIEF OPPOSING CERTIORARI

We cannot let stand two assertions in respondent's brief that statements in the Petition are "untrue." The very citations to the record to which respondent refers this Court in support of these assertions support the correctness of the statements challenged as "untrue."

1. In paragraph numbered 3 on p. 2 of its brief respondent brands as "untrue" the statement in our Petition that the trial court "refused to permit plaintiff to examine witnesses concerning the effect of the Government case and the change in business practices resulting therefrom . . ." (Petition p. 7). Respondent has omitted in its quotation from our Petition the important words "resulting therefrom." At no point would the court admit evidence that the

changes in respondent's business practices resulted from the Government case.

Respondent in its brief, p. 2, further misleads when it states that the changes of practice in 1955 were "all pursuant to the Government decree," as though that important fact was part of the record and known to the jury. This important fact was kept from the jury, as respondent well knows. Finally, the citations in support of the asserted untruth of our statement confirm its truth in every respect.

PR 286-9, 290: these citations show that the trial court, though carrying out in full its ruling barring any reference to the Government case, permitted the witness Brown, respondent's chairman, to answer whether the changes in respondent's business practices were "voluntary or involuntary," PR 287, but would not permit the witness to say what caused the changes, PR 289. What caused them was, of course, the Government decree. The jury was never permitted to know this key fact.

PR 1783, 1796, 1823-4: these again show the pains the trial court took to avoid even a hint to the jury that the Government case had ever existed. The references here involve rulings on reading from depositions.

PR 1429-32 (summation of petitioner's counsel): this reference shows that petitioner's counsel in his summation to the jury faithfully carried out the rulings of the court and made no mention of the Government case in describing the radical changes in defendant's business practices that occurred in 1955. Counsel carried out the "voluntary or involuntary" formula of the court, a point that must surely have left the jury puzzled and confused. Why were all these radical changes in United's business practices made

in 1955? The record before the jury is silent beyond the word that they were "involuntary." Why were they "involuntary"? The jury was not permitted to know.

2. In paragraph numbered 4 on pp. 2-3 of its brief respondent brands as "also untrue" the statement in our Petition that the pre-trial order which purported to permit either party to introduce relevant background evidence (PR 15) "was simply ignored by the trial court" (Petition p. 12, footnote*). In support, respondent has found in a transcript of 5100 pages and hundreds of exhibits perfunctory data identifying respondent's chairman Brown as having been in charge of the foreign operations of respondent from 1937-1949, PR 146, and a ruling by the court allowing similar data as to company history, PR 159. Finally, respondent cites the testimony of petitioner machinery expert De Pesa as to his personal experiences in shoe factories since high school days, PR 63-71.

None of the foregoing perfunctory evidence had any relevance whatsoever to the merits of the case.

The truth of our statement is supported not only by the exclusion of the matters in issue and determined by the Government decree, as we state in our Petition pp. 12-14, but also by the persistent exclusion of other evidence relevant and material to the proof of monopolization and injury within the limitations period. See Daniels PR 577-78, 591-592; Brown, PR 276, 290, 314, 327, 332-33, 373; Pl. Ex. 58 for id., PR 318-23; OMR bulletins, PR 218-23. We did not deem it necessary to develop this point in our Petition and will do so, as we did in the court below, in our brief if our Petition is granted.

Respectfully submitted,

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